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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Resolution adopted by the Human Rights Council

26/21 Promotion of the right of migrants to the enjoyment of the highest attainable standard of physical and mental health

The Human Rights Council,

Reaffirming the Universal Declaration of Human Rights, which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Vienna Convention on Consular Relations, the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

Recalling also previous resolutions of the General Assembly, the Commission on Human Rights and the Human Rights Council on the protection of the human rights of migrants, the relevant resolutions of the World Health Assembly, in particular its resolution 61.17 of 24 May 2008, and the work of the various special mechanisms of the Council that have reported on the situation of the human rights and fundamental freedoms of migrants,

Reaffirming that the Universal Declaration of Human Rights proclaims that everyone has the right to freedom of movement and residence within the borders of each State and the right to leave any country, including his or her own, and to return to his or her country,

Reaffirming also that everyone is entitled to all human rights and fundamental freedoms, without distinction of any kind, wherever the person is and regardless of his or her immigration status,

Recognizing that States are responsible for promoting and protecting the human rights of all persons, including irregular migrants, who are in their territory and subject to their jurisdiction,

Deeply concerned at the large and growing number of migrants, including women and children, who have lost their lives or have been injured in attempting to cross international borders, including those without the required travel documents, and recognizing the obligation of States to protect and respect the human rights of those crossing their borders, regardless of their immigration status,

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to border control and the orderly management of migration, must be in accordance with international human rights obligations in order to uphold the human rights and fundamental freedoms of all migrants,

Expressing its concern at measures that, including in the context of policies aimed at reducing irregular migration, treat irregular migration as a criminal rather than an administrative offence, where the effect of doing so is to deny migrants the full enjoyment of their human rights and fundamental freedoms,

Reaffirming that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is a human right, as reflected in, inter alia, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, as well as, with respect to non-discrimination, in the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities,

Reaffirming also the need to continue to pursue adequate and sustainable health financing to promote the progressive realization of the right to the enjoyment of the highest attainable standard of physical and mental health, and the importance in this regard of national resource mobilization and international cooperation,

Welcoming the important results of the second High-level Dialogue on International Migration and Development, held on 3 and 4 October 2013,

Reaffirming the Declaration of the High-Level Dialogue on International Migration and Development, adopted by the General Assembly at its sixty-eighth session,[1] which acknowledges the important contribution of migration in realizing the Millennium Development Goals and recognizes that human mobility is a key factor for sustainable development, which should receive due consideration in the elaboration of the post-2015 development agenda,

Taking note of the seventh Global Forum on Migration and Development, which highlighted that migrants' access to basic services, including health services, is one way to ensure that migrants are not excluded from the goals that will be articulated by the international community for the post-2015 development agenda, and emphasized the importance of facilitating access to regular forms of migration and, where applicable, to social services, including health goods, services and conditions, that contribute to the prosperity of countries of origin, transit and destination and to the strengthening of the

[1] General Assembly resolution 68/4.

empowerment and personal development prospects and outcomes for migrants and their families,

Acknowledging the important role that migrants play as partners in the development of origin, transit and destination countries, and recognizing the need to improve public perceptions of migrants and migration,

Noting the observation made by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in his report submitted to the Human Rights Council at its twenty-third session,[2] that States should adopt and implement an effective national health policy that does not discriminate against non-nationals and that addresses the needs of irregular and regular migrants, at all stages of the migration process, and that States should ensure the availability and accessibility of quality health facilities, goods and services, including existing health insurance schemes, to migrants, on the basis of equality with other nationals,

Mindful of the fact that, in the fulfilment of their obligations to protect human rights, States of origin, transit and destination can benefit from schemes of international cooperation,

Mindful also that migrant access to health services may help to mitigate the risk of widening inequalities, and recognizing that health contributes to the full enjoyment of human rights,

1. *Takes note with appreciation* of the report of the Special Rapporteur on the human rights of migrants,[3] invites States to give due consideration to the recommendations contained therein, and welcomes his work;

2. *Calls upon* States that have not yet done so to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as a matter of priority, and requests the Secretary-General to continue his efforts to promote and raise awareness of the Convention;

3. *Reaffirms* the duty of States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party;

4. *Stresses* that the enjoyment of the highest attainable standard of physical and mental health contributes to the full enjoyment of human rights;

5. *Calls upon* States to promote and protect the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as reflected in the Universal Declaration of Human Rights and the International Covenant of Economic, Social and Cultural Rights, and encourages them to promote equitable access to health services, disease prevention and care for migrants, subject to national laws and practice, without discrimination of any kind;

6. *Expresses concern* at legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants, including the enjoyment of the highest attainable standard of physical and mental health;

7. *Reaffirms* that, when exercising their sovereign right to enact and implement migration and border security measures, States have the duty to comply with their

[2] A/HRC/23/41.
[3] A/HRC/26/35.

obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants;

8. *Calls upon* all States to ensure that their immigration policies are consistent with their obligations under international human rights law, and to promote the enjoyment of human rights by all migrants without discrimination, including by taking steps:

(*a*) To promote and protect the right of all persons to the highest attainable standard of physical and mental health without discrimination of any kind and, to this end, to provide emergency medical and first-aid attention for migrants who need it, regardless of their immigration status, and to create a safe and enabling environment in which individuals and organizations that provide such attention can operate free from hindrance and insecurity;

(*b*) To promote access to health services for everyone and migrant-sensitive health policies, including by taking into account physical, financial, cultural and linguistic barriers that may contribute to furthering inequalities;

(*c*) To the effect that domestic law and administrative provisions and their application facilitate the work of medical personnel and staff, humanitarian workers, human rights defenders and any other actor providing humanitarian assistance to and defending the human rights of irregular migrants, including by avoiding any criminalization, stigmatization, impediments, obstructions or restrictions thereof contrary to international human rights law;

(*d*) To ensure that no person engaged in medical activities is penalized in any way for refusing or failing to give to immigration authorities information concerning the immigration status of a person under his or her care or for providing health care and health-related assistance to undocumented migrants;

(*e*) To ensure that persons engaged in medical activities are not compelled to perform immigration duties or any other acts contrary to the rules of medical ethics or other rules designed for the benefit of the patients;

(*f*) To ensure that health-care workers who interact with migrants on a routine basis have good information about the rights of migrants in different legal statuses and about their obligations towards migrants;

9. *Encourages* countries of origin, transit and destination to seek technical assistance from and/or to collaborate with the Office of the United Nations High Commissioner for Human Rights and the World Health Organization to better promote and protect the human rights of migrants, including the right to the enjoyment of the highest attainable standard of physical and mental health;

10 *Takes note with appreciation* of the actions taken by several special procedures of the Human Rights Council and the treaty bodies for the effective prevention of violations of the human rights of migrants, including through joint statements and urgent appeals, and encourages them to continue their collaborative efforts to this end, within their respective mandates;

11. *Requests* the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, within their respective mandates, to continue their efforts to promote and support the building of greater synergies among States to strengthen cooperation and assistance for the protection of the human rights of all migrants and to promote their right to health;

12. *Requests* the Special Rapporteur on the human rights of migrants to continue to report on practical solutions, including by identifying best practices and concrete areas

and means for international cooperation, in order to enhance the protection of the human rights of migrants and to continue to pay attention to the topic of the universal enjoyment of human rights for all migrants;

13. *Encourages* States and regional and international organizations to enhance cooperation with the Special Rapporteur;

14. *Decides* to remain seized of the matter.

39th meeting
27 June 2014

[Adopted without a vote.]